

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAMERON ANTHONY MORRIS,
Plaintiff,
v.
CALIFORNIA STATE PRISON,
LOS ANGELES COUNTY, ET AL.,
Defendants.

No. CV 24-4036-RGK(E)

ORDER DISMISSING
FIRST AMENDED COMPLAINT
WITH LEAVE TO AMEND

For the reasons discussed below, the First Amended Complaint is dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(1).

BACKGROUND

Plaintiff, a state prisoner confined to the California State Prison, Los Angeles County (“CSP-LAC”), filed this pro se civil rights action pursuant to 42 U.S.C. § 1983 on May 10, 2024. The Court granted Plaintiff in forma pauperis status on June 5, 2024.

Although somewhat difficult to decipher, the original Complaint appeared to allege the following:

On April 15, 2024, at approximately 1:30 p.m., Plaintiff and fellow prisoner Keivon Swint “had a physical altercation” (Complaint, p. 7).¹ Consequently, Plaintiff and Swint were placed in holding cells in the CSP-LAC Facility C gym pending interviews by supervisory staff (id., pp. 6-7). At approximately 2:30 p.m., Correctional Officer M. Salazar opened Swint’s holding cell to allow Swint to use the restroom (id., p. 8). Salazar did not handcuff Swint or accompany him to the restroom (id.). When Swint returned from the restroom, Swint “walked up to the Plaintiff’s holding cage without any

¹ The Court uses the ECF pagination when referring to the Complaint or the First Amended Complaint.

1 ‘interference from custody,’” and spit on Plaintiff’s face, hair and arms (*id.*, pp. 8-9).

2 Salazar observed the spitting incident, but she allowed Swint to return to his holding cell
 3 (*id.*, p. 9). Plaintiff asked Salazar to activate her institutional alarm, but Salazar walked
 4 away and “maintained her silence” (*id.*).

5 In the original Complaint, it appeared that Plaintiff was attempting to assert an Eighth
 6 Amendment claim for failure to protect Plaintiff from a serious risk of harm.

7 On June 13, 2024, the Court issued an “Order Dismissing Complaint with Leave to Amend”
 8 (“the previous Order”). The previous Order dismissed the original Complaint, *inter alia*, for failure to
 9 comply with Rule 8, failure to state an Eighth Amendment claim and failure to state any section 1983
 10 claim.

11 With regard to Rule 8, the previous Order explained:

12 Under Rule 8(a) of the Federal Rules of Civil Procedure, a pleading must contain
 13 a “short and plain statement of the claim showing that the pleader is entitled to relief.”
 14 “Each allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).
 15 “Experience teaches that, unless cases are pled clearly and precisely, issues are not
 16 joined, discovery is not controlled, the trial court’s docket becomes unmanageable, the
 17 litigants suffer, and society loses confidence in the court’s ability to administer justice.”
 18 Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000) (citations and
 19 quotations omitted); see Ashcroft v. Iqbal, 556 U.S. 662, 686 (2009) (a plaintiff must
 20 allege more than an “unadorned, the-defendant-unlawfully-harmed me accusation”; a
 21 pleading that “offers labels and conclusions or a formulaic recitation of the elements of
 22 a cause of action will not do”) (citations and quotations omitted).

23 The Complaint, which is replete with case citations and legal arguments, fails to
 24 comply with Rule 8. See Osby v. Park Pictures, LLC, 2017 WL 374902, at *5 (C.D. Cal. Jan.
 25, 2017) (“Legal argument, case citations and refutation of arguments that are
 26 anticipated are not necessary or appropriate in a pleading.”) (citation and internal
 27 quotations omitted); Greenspan v. Admin. Office of the United States Courts, 2014 WL
 28 6847460, at *5 n.10 (N.D. Cal. Dec. 4, 2014) (“Legal argument in a complaint is not

appropriate under federal pleading rules."); Harris v. Kim, 2009 WL 691975, at *3 (C.D. Cal. Mar. 16, 2009) (legal argument and references to legal authorities in a complaint are inappropriate). The Complaint provides no clear chronology of the alleged events, no coherent statement of Plaintiff's legal claim for relief and few understandable allegations of facts supporting the claim. Plaintiff's vague and conclusory allegations of alleged wrongdoing do not suffice. See Ashcroft v. Iqbal, 556 U.S. at 678, 686 (conclusory allegations are insufficient). Thus, the Complaint is subject to dismissal for failure to comply with Rule 8. See id.; Patterson v. Old Republic Title Co., 2012 WL 2450710, at *2 (E.D. Cal. June 26, 2012) (dismissing complaint that was "disorganized to the point of confusion" and failed to "contain a coherent . . . factual narrative" or a short and plain statement of facts supporting each claim).

With regard to the Eighth Amendment, the previous Order explained:

"The Eighth Amendment imposes a duty on prison officials to protect inmates from violence at the hands of other inmates." Cortez v. Skol, 776 F.3d 1046, 1050 (9th Cir. 2015) (citing Farmer v. Brennan, 511 U.S. 825, 833 (1994)). Prison officials can violate the constitution if they are "deliberately indifferent" to a serious risk of harm to the inmate. See Farmer v. Brennan, 511 U.S. at 834; Estelle v. Gamble, 429 U.S. 97, 104 (1976); Cortez v. Skol, 776 F.3d at 1050. To be liable for "deliberate indifference," a prison official must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. at 837. "[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot . . . be condemned as the infliction of punishment." Id. at 838. Allegations of negligence do not suffice. Estelle v. Gamble, 429 U.S. at 105-06; Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc). "[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot . . . be condemned as the infliction of punishment." Farmer v. Brennan, 511 U.S. at 838.

1 The Complaint contains no factual allegations plausibly demonstrating that
 2 Salazar subjectively perceived a substantial risk of serious harm to Plaintiff posed by
 3 allowing Swint to leave his holding cell and go to the restroom unaccompanied and
 4 without handcuffs while Plaintiff remained in a separate holding cell. Plaintiff's
 5 conclusory accusations do not suffice. See Ashcroft v. Iqbal, 556 U.S. at 678.

6 In addition, Plaintiff has not alleged any facts plausibly demonstrating that
 7 Plaintiff suffered physical injury from Swint allegedly spitting on Plaintiff. To the extent
 8 that Plaintiff seeks redress only for alleged mental or emotional injuries, Plaintiff's claim
 9 fails as a matter of law. See 42 U.S.C. § 1997e(e) ("No Federal civil action may be
 10 brought by a prisoner confined in a jail, prison, or other correctional facility, for mental
 11 or emotional injury suffered while in custody without a prior showing of physical injury
 12 or the commission of a sexual act . . ."). Section 1997e(e) requires a plaintiff to show
 13 more than a de minimis physical injury in order to recover damages for mental or
 14 emotional injuries. See Oliver v. Keller, 289 F.3d 623, 629-30 (9th Cir. 2002).

15 With regard to the failure to state any section 1983 claim, the previous Order explained:

16 Plaintiff appears to allege violations of state law and state prison regulations (see
 17 generally Complaint, pp. 5-9). It is axiomatic that, to state a claim under section 1983,
 18 the plaintiff must allege a violation of a right secured by the federal constitution or
 19 federal law. See Parratt v. Taylor, 451 U.S. 527, 535 (1982), overruled on other grounds,
 20 Daniels v. Williams, 474 U.S. 327 (1986); Haygood v. Younger, 769 F.2d 1350, 1353 (9th
 21 Cir. 1985), cert. denied, 478 U.S. 1020 (1986) (en banc). Plaintiff's allegations of
 22 violations of state law or prison regulations, policies or procedures do not suffice to
 23 plead a section 1983 claim. See Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009)
 24 (violations of California prison regulations "do not establish a federal constitutional
 25 violation") (citations omitted; emphasis in original); Cornejo v. County of San Diego, 504
 26 F.3d 853, 855 n.2 (9th Cir. 2007) ("a claim for violation of state law is not cognizable
 27 under § 1983") (citation omitted); Lovell v. Poway Unif. Sch. Dist., 90 F.3d 367, 370-71
 28 (9th Cir. 1996) ("To the extent that the violation of a state law amounts to the

1 deprivation of a state-created interest that reaches beyond that guaranteed by the
 2 federal Constitution, Section 1983 offers no redress") (citation omitted); Kitilya v. Cal.
 3 Dep't of Corr. and Rehab., 2018 WL 3129816, at *2 (E.D. Cal. June 20, 2018) ("Section
 4 1983 provides no redress for prison officials' mere violation of state prison
 5 regulations.") (citations omitted).

6
 7 On June 27, 2024, Plaintiff filed a First Amended Complaint based on the same April 15, 2024
 8 incident described in the original Complaint. In addition to invoking alleged violations of state law or
 9 state prison regulations, policies and procedures, the First Amended Complaint again contains
 10 conclusory assertions relating to section 1983. The First Amended Complaint also attempts to allege
 11 an "equal protection" claim.

12 **DISCUSSION**

13 The First Amended Complaint suffers from some of the same fundamental defects afflicting
 14 the original Complaint. Again, the First Amended Complaint improperly contains numerous case
 15 citations and legal arguments. Again, the First Amended Complaint fails to state an Eighth
 16 Amendment claim (for the same reasons the original Complaint failed to do so). The First Amended
 17 Complaint again appears improperly to attempt to bootstrap alleged violations of state law or state
 18 prison regulations, policies or procedures into a section 1983 claim.

19 The First Amended Complaint also fails to state an equal protection claim. To state such a
 20 claim, a plaintiff must allege facts showing that the plaintiff was intentionally treated differently from
 21 others similarly situated and that there was no rational basis for the difference in treatment. See
 22 Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Barren v. Harrington, 152 F.3d at 1194-95.
 23 The First Amended Complaint fails to allege any facts plausibly suggesting that Defendant intentionally
 24 treated Plaintiff differently from others similarly situated and that there was no rational basis for the
 25 difference in treatment. See Ashcroft v. Iqbal, 556 U.S. at 678-79 (conclusory equal protection claim
 26 insufficient); Oberdorfer v. Jewkes, 583 Fed. App'x 770, 772-73 (9th Cir. 2014), cert. denied, 575 U.S.
 27 984 (2015) (same). Hence, Plaintiff has failed to state a cognizable equal protection claim.
 28

CONCLUSION AND ORDER

The First Amended Complaint is dismissed. Although Plaintiff appears to have failed to heed the previous Order, the Court will afford Plaintiff another opportunity to amend. Absent extraordinary circumstances, this leave to amend will be Plaintiff's last opportunity to file an amended complaint complying with this Court's orders.

If Plaintiff still wishes to pursue this action, he is granted thirty (30) days from the date of this Order within which to file a Second Amended Complaint. Any Second Amended Complaint shall be complete in itself and shall not refer in any manner to the original Complaint or the First Amended Complaint. Plaintiff may not add Defendants without leave of Court. See Fed. R. Civ. P. 21. Failure timely to file a Second Amended Complaint in conformity with this Order may result in the dismissal of the action. See Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002), cert. denied, 538 U.S. 909 (2003) (court may dismiss action for failure to follow court order); Simon v. Value Behav. Health, Inc., 208 F.3d 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir. 2000), cert. denied, 531 U.S. 1104 (2001), overruled on other grounds, Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 552 U.S. 985 (2007) (en banc) (affirming dismissal without leave to amend where plaintiff failed to correct complaint's deficiencies, court had afforded plaintiff opportunities to do so, and court had given plaintiff notice of the substantive problems with his claims); Plumeau v. Sch. Dist. No. 40, County of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997) (denial of leave of amend appropriate where further amendment would be futile).²

IT IS SO ORDERED.

Dated: July 9, 2024

Jay Krausma

R. GARY KLAUSNER
UNITED STATES DISTRICT JUDGE

PRESENTED this 1st day of
July, 2024, by: _____ /S/ _____

CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

² Alternatively, if, as may be suggested at the bottom of page 5 of the First Amended Complaint, Plaintiff does not wish to amend, but rather wishes to "stand on" the First Amended Complaint and take an appeal from the dismissal of this action, Plaintiff may file a notice expressing such a desire within thirty (30) days from the date of this Order.